

# United States Senate

WASHINGTON, DC 20510-2202

May 28, 2013

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

In advance of Tom Donilon's trip to China I sent him a copy of S.884, the Deter Cyber Theft Act, which I recently introduced with Senators McCain, Rockefeller and Coburn. I see you are meeting with Chinese President Xi Jinping June 7 and 8 in California and I wanted to bring this bill to your attention as well.

S. 884 would require the Director of National Intelligence to produce a report that includes a priority watch list of foreign countries that engage in economic or industrial espionage against the United States in cyberspace. The bill also would require the President, if he determines such action is warranted, to block imports of certain categories of goods if they benefitted from the stolen U.S. technology or proprietary information. I intend to seek Congressional action on this bill this year.

I thought you could refer to this bill in your meeting with President Xi as an example that the U.S. will indeed impose real costs on China should they continue to steal our intellectual property.

Sincerely,



Carl Levin

Enclosure

**Full Bill Text for the 113th Congress****S.884 (Introduced in Senate - IS)****1 of 1**[Search Results](#) > S.884 (Introduced in Senate - IS)[New Search](#)[Help](#) | [Contact Us](#)This Bill: [Bill Summary & Status](#)Printer Friendly: [HTML](#) | [PDF](#) | [XML](#)[Print](#)[Subscribe](#)[Email/Save](#)[Share from THOMAS](#)

## **S.884**

### **Deter Cyber Theft Act (Introduced in Senate - IS)**

S 884 IS

113th CONGRESS

1st Session

**S. 884**

To require the Director of National Intelligence to develop a watch list and a priority watch list of foreign countries that engage in economic or industrial espionage in cyberspace with respect to United States trade secrets or proprietary information, and for other purposes.

#### **IN THE SENATE OF THE UNITED STATES**

**May 7, 2013**

Mr. LEVIN (for himself, Mr. MCCAIN, Mr. COBURN, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Finance

#### **A BILL**

To require the Director of National Intelligence to develop a watch list and a priority watch list of foreign countries that engage in economic or industrial espionage in cyberspace with respect to United States trade secrets or proprietary information, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Deter Cyber Theft Act'.

#### **SEC. 2. ACTIONS TO ADDRESS FOREIGN ECONOMIC OR INDUSTRIAL**

**ESPIONAGE IN CYBERSPACE.****(a) Report Required-**

(1) **IN GENERAL-** Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Director of National Intelligence shall submit to the appropriate congressional committees a report on foreign economic and industrial espionage in cyberspace during the 12-month period preceding the submission of the report that--

**(A) identifies--**

(i) foreign countries that engage in economic or industrial espionage in cyberspace with respect to trade secrets or proprietary information owned by United States persons;

(ii) foreign countries identified under clause (i) that the Director determines engage in the most egregious economic or industrial espionage in cyberspace with respect to such trade secrets or proprietary information (in this section referred to as 'priority foreign countries');

(iii) technologies or proprietary information developed by United States persons that--

(I) are targeted for economic or industrial espionage in cyberspace; and

(II) to the extent practicable, have been appropriated through such espionage;

(iv) articles manufactured or otherwise produced using technologies or proprietary information described in clause (iii)(II);

(v) services provided using such technologies or proprietary information; and

(vi) foreign entities, including entities owned or controlled by the government of a foreign country, that request, engage in, support, facilitate, or benefit from the appropriation through economic or industrial espionage in cyberspace of technologies or proprietary information developed by United States persons;

(B) describes the economic or industrial espionage engaged in by the foreign countries identified under clauses (i) and (ii) of subparagraph (A); and

**(C) describes--**

(i) actions taken by the Director and other Federal agencies to decrease the prevalence of economic or industrial espionage in cyberspace; and

(ii) the progress made in decreasing the prevalence of such espionage.

(2) **DETERMINATION OF FOREIGN COUNTRIES ENGAGING IN ECONOMIC OR INDUSTRIAL ESPIONAGE IN CYBERSPACE-** For purposes of clauses (i) and (ii) of

paragraph (1)(A), the Director shall identify a foreign country as a foreign country that engages in economic or industrial espionage in cyberspace with respect to trade secrets or proprietary information owned by United States persons if the government of the foreign country--

(A) engages in economic or industrial espionage in cyberspace with respect to trade secrets or proprietary information owned by United States persons; or

(B) facilitates, supports, fails to prosecute, or otherwise permits such espionage by--

(i) individuals who are citizens or residents of the foreign country; or

(ii) entities that are organized under the laws of the foreign country or are otherwise subject to the jurisdiction of the government of the foreign country.

(3) PRIORITIZATION OF COLLECTION AND ANALYSIS OF INFORMATION- The President shall direct the Director to make it a priority for the intelligence community to collect and analyze information in order to identify articles described in clause (iv) of paragraph (1)(A), services described in clause (v) of that paragraph, and entities described in clause (vi) of that paragraph.

(4) FORM OF REPORT- Each report required by paragraph (1) shall be submitted in unclassified form but may contain a classified annex.

(b) Action by President-

(1) IN GENERAL- Not later than 120 days after each report required by subsection (a)(1) is submitted, the President shall direct U.S. Customs and Border Protection to exclude from entry into the United States an article described in paragraph (2) if the President determines the exclusion of the article is warranted--

(A) for the enforcement of intellectual property rights; or

(B) to protect the integrity of the Department of Defense supply chain.

(2) ARTICLE DESCRIBED- An article described in this paragraph is an article--

(A) identified under subsection (a)(1)(A)(iv);

(B) produced or exported by an entity that--

(i) is owned or controlled by the government of a priority foreign country; and

(ii) produces or exports articles that are the same as or similar to articles manufactured or otherwise produced using technologies or proprietary information identified under subsection (a)(1)(A)(iii); or

(C) produced or exported by an entity identified under subsection (a)(1)(A)(vi).

(c) Consistency With International Agreements- This section shall be applied in a manner that is

consistent with the obligations of the United States under international agreements.

(d) Definitions- In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES- The term 'appropriate congressional committees' means--

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Finance, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Committee on Homeland Security, the Committee on Foreign Affairs, the Committee on Ways and Means, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) CYBERSPACE- The term 'cyberspace'--

(A) means the interdependent network of information technology infrastructures; and

(B) includes the Internet, telecommunications networks, computer systems, and embedded processors and controllers.

(3) ECONOMIC OR INDUSTRIAL ESPIONAGE- The term 'economic or industrial espionage' means--

(A) stealing a trade secret or proprietary information or appropriating, taking, carrying away, or concealing, or by fraud, artifice, or deception obtaining, a trade secret or proprietary information without the authorization of the owner of the trade secret or proprietary information;

(B) copying, duplicating, downloading, uploading, destroying, transmitting, delivering, sending, communicating, or conveying a trade secret or proprietary information without the authorization of the owner of the trade secret or proprietary information; or

(C) knowingly receiving, buying, or possessing a trade secret or proprietary information that has been stolen or appropriated, obtained, or converted without the authorization of the owner of the trade secret or proprietary information.

(4) INTELLIGENCE COMMUNITY- The term 'intelligence community' has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(5) OWN- The term 'own', with respect to a trade secret or proprietary information, means to hold rightful legal or equitable title to, or license in, the trade secret or proprietary information.

(6) PERSON- The term 'person' means an individual or entity.

(7) PROPRIETARY INFORMATION- The term 'proprietary information' means competitive bid preparations, negotiating strategies, executive emails, internal financial

data, strategic business plans, technical designs, manufacturing processes, source code, data derived from research and development investments, and other commercially valuable information that a person has developed or obtained if--

(A) the person has taken reasonable measures to keep the information confidential; and

(B) the information is not generally known or readily ascertainable through proper means by the public.

(8) TECHNOLOGY- The term 'technology' has the meaning given that term in section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415) (as in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)).

(9) TRADE SECRET- The term 'trade secret' has the meaning given that term in section 1839 of title 18, United States Code.

(10) UNITED STATES PERSON- The term 'United States person' means--

(A) an individual who is a citizen of the United States or an alien lawfully admitted for permanent residence to the United States; or

(B) an entity organized under the laws of the United States or any jurisdiction within the United States.

This Bill: [Bill Summary & Status](#)

Printer Friendly: [HTML](#) | [PDF](#) | [XML](#)

[Print](#)

[Subscribe](#)

[Email/Save](#)

[!\[\]\(b538fe54c1f3a7343e37e85cc2d00497\_img.jpg\) Share from THOMAS](#)

[Search Results](#) > S.884 (Introduced in Senate - IS)

[New Search](#)

[Help](#) | [Contact Us](#)

1 of 1